S.B. CIVIL MISC. APPEAL NO. 12/2000

Date : 10.05.2006

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. R.K. Mehta for the appellant.
Mr. Rajesh Panwar for the respondent.

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Heard.

Learned counsel for the Insurance company has stated that liability of the Insurance company is only to the extent of Rs.10,000/- in terms of Motor Vehicles Act, 1939. The accident has taken place on 30.08.81, therefore, the accident will have to be governed by old Act.

Learned counsel for the respondent per contra submitted that the tariff per passenger is Rs. 12/- but the Insurance company has charged Rs.17/- which is for un-limited liability. Apart from this,learned counsel has placed reliance on a Division Bench decision of this Court in the matter of Smt. Sayra Devi & Ors Vs. National Insurance co. Ltd reported in 2006 (4) RDD 1998 (Raj.) wherein, it has been held that in terms of the avoidance clause, the Insurance company will have to make good the claim as far as the claimant is concerned and it may charge it from the insured. In view of the avoidance clause which is available on record and which was produced by the claimants on record of the case, the Insurance company will have to make good the claim of the claimant and if the amount which is claimed is excess of the liability, the Insurance company will have to ask the insured to pay back. For that, the Insurance company will have all the

arguments to be raised as and when a claim is lodged by the Insurance company in the Court to get the amount recovered. As far as the claimants are concerned, they are liable to pay in terms of the Division Bench decision referred supra.

The appeal is disposed of accordingly.

(BHAGWATI PRASAD), J.